

IN THE KENTUCKY PUBLIC SERVICE COMMISSION

IN RE: INVESTIGATION:

Case No. 2003-00433  
AN ADJUSTMENT OF THE GAS AND ELECTRIC RATES,  
TERMS, AND CONDITIONS OF LOUISVILLE GAS AND  
ELECTRIC COMPANY

and

Case No. 2003-00434  
AN ADJUSTMENT OF THE ELECTRIC RATES, TERMS, AND  
CONDITIONS OF KENTUCKY UTILITIES COMPANY

\* \* \*

SWORN STATEMENT

OF

KIMBERLY McCANN

AUGUST 10, 2005

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*MA*

A P P E A R A N C E S

SPECIAL GENERAL COUNSEL TO THE PUBLIC SERVICE  
COMMISSION:

JONATHAN D. GOLDBERG  
Goldberg & Simpson  
3000 National City Tower  
101 South Fifth Street  
Louisville, Kentucky 40202

1                   The sworn statement of KIMBERLY  
2 McCANN, taken telephonically in the offices of  
3 Goldberg & Simpson, 3000 National City Tower,  
4 101 South Fifth Street, Louisville, Kentucky, on  
5 Wednesday, the 10th day of August, 2005, at  
6 approximately 9:05 a.m.

7  
8                   EXAMINATION

9  
10           BY MR. GOLDBERG:

11                   Q.       Could you state your name.

12                   A.       Kimberly McCann.

13                   Q.       All right. And your business address?

14                   A.       1544 Winchester Avenue, Ashland,  
15 Kentucky.

16                   Q.       All right. And do you have a ZIP code  
17 with that, by chance?

18                   A.       41101.

19                   Q.       Thank you. And what is your  
20 occupation?

21                   A.       I'm an attorney.

22                   Q.       Okay. And where do you practice law?

23                   A.       In Ashland, Kentucky, but throughout  
24 the state.

25                   Q.       Okay. And what is the name of the

1 firm?

2 A. VanAntwerp, Monge, Jones and Edwards.

3 Q. I take it the business address you  
4 gave me is the address of the firm.

5 A. That is correct.

6 Q. Okay. How long have you been a  
7 lawyer?

8 A. I have -- I've been here since 1986.

9 Q. All right. And are you familiar with  
10 an entity known as North American Stainless?

11 A. Yes, I am.

12 Q. Okay. Have you represented in your  
13 practice North American Stainless prior to September  
14 of 2003?

15 A. I've been involved representing North  
16 American Stainless since they became located and  
17 formed in the State of Kentucky.

18 Q. Okay. And it's my understanding they  
19 are in Ghent, Kentucky.

20 A. That is correct, on U.S. 42.

21 Q. All right. With regard to North  
22 American Stainless, have you ever represented North  
23 American Stainless in matters before the Public  
24 Service Commission?

25 A. Yes.

1           Q.       Okay. And had you represented them in  
2 matters before the Public Service Commission prior to  
3 September of 2003?

4           A.       Jon, I don't really recall if I've  
5 ever been involved in any other cases for them before  
6 the Public Service Commission other than the rate  
7 cases that you're talking about.

8           Q.       All right. Fair enough. Let me take  
9 you back to late summer, early fall of 2003. Did you  
10 become familiar with controversy between North  
11 American Stainless and KU with regard to the amount  
12 of money that North American Stainless was paying for  
13 electricity?

14          A.       Yes.

15          Q.       Okay. Tell me how you first became  
16 involved in the controversy.

17          A.       I think how I first knew about it was  
18 somewhere along the lines was when I knew that North  
19 American Stainless had a special contract with LG&E  
20 and KU, and there was an issue then about whether  
21 that special contract would come to an end or they  
22 would fall under a tariff or what would happen. And  
23 that would have been sometime in the early part of  
24 2003.

25          Q.       And what course of action were you

1 engaged to pursue for North American Stainless with  
2 regard to that matter? Did you hear me, Kim?

3 A. Yeah, I'm trying to think. I mean, we  
4 represented North American Stainless, I guess, in --  
5 well, I personally -- I don't know that I  
6 participated in any negotiations of contracts or  
7 anything like that. I can't recall doing any of  
8 that. I attended one or two meetings regarding that  
9 issue, but I think that until the PSC case was really  
10 pending, I can't really recall that I did anything  
11 else much with it other than maybe attended a couple  
12 of meetings.

13 Q. Okay. And these meetings you  
14 attended, were they with North American Stainless  
15 personnel?

16 A. No, they were not.

17 Q. Okay. Did you have any meetings prior  
18 to September of 2003 with Public Service Commission  
19 staff or members?

20 A. I think maybe one. I possibly went to  
21 two.

22 Q. Okay. And do you recall who was  
23 present for the Public Service Commission?

24 A. I remember Tom Dorman at a meeting  
25 early in 2003, and I'm not really sure if there were

1 others. I think there may have been others present,  
2 and it could have been either Jeff Shaw or Richard  
3 Raff. But I don't really recall who may have come  
4 and went.

5 Q. Okay. Using the reference point of  
6 the actual filing of a complaint by North American  
7 Stainless against KU of September of 2003, do you  
8 recall prior to the filing of that complaint any  
9 meetings other than the one you told me about with  
10 the staff?

11 A. Well, one or two.

12 Q. Okay.

13 A. And I don't remember if I attended one  
14 or two. I definitely remember being there once.

15 Q. All right. It has been referenced  
16 that particular -- that set of meetings, as being a  
17 meeting to discuss with the PSC staff, a problem. Is  
18 that a fair representation of the sum and substance  
19 of the meetings?

20 A. I would think, yes, that would be  
21 correct.

22 Q. Okay. And this was prior to the  
23 filing of any complaint; am I correct?

24 A. Oh, yes.

25 Q. Okay. After the filing of the

1 complaint in September of 2003 and the subsequent  
2 filing by KU of a tariff request, did you participate  
3 for North American Stainless in this matter?

4 A. Yes, I did.

5 Q. Okay. Now, so that I can give you  
6 some chronology reference points, KU and LG&E filed a  
7 notice of an intent to seek rate increase in November  
8 of 2003, late November 2003. Between the filing of  
9 the complaint and the subsequent tariff request by KU  
10 at the end of November of 2003, did you work on this  
11 matter?

12 A. I don't really recall, Jon, what I  
13 would or would not have done during that time period.

14 Q. All right. Is it fair to say you had  
15 no contact with the staff or commission members  
16 during that period of time?

17 A. That is correct. I don't recall any  
18 meetings, any contact, anything of that nature.

19 Q. Okay. From -- after the notice of  
20 intent to file, the KU and LG&E actually filed rate  
21 increase -- filed for rate increases at the end of  
22 December of 2003. Do you have a recollection of --  
23 between December of 2003 and April 28th, 2004, which  
24 I'm referencing to you is the first informal  
25 conference, do you have a recollection of having



1 worked on the North American Stainless matter?

2 A. I may or may not have worked on the  
3 matter.

4 Q. Okay. I take it you have no present  
5 recollection, then.

6 A. Do not. I don't recall any meeting of  
7 any kind with anyone.

8 Q. Okay. And do I take it you did not,  
9 then, participate in a motion to consolidate the  
10 North American Stainless complaint and tariff matter  
11 with KU with the two rate cases?

12 A. I don't think I actively participated  
13 in that.

14 Q. Okay. Now, using, again, that date,  
15 April 28, 2004, the date of the first informal  
16 conference, did you have any contact from the filing  
17 of the complaint, late December 2003, to April 28,  
18 2004, with the staff or commission members?

19 A. No, I did not.

20 Q. Okay. Did you attend an informal  
21 conference or the informal conference on April 28,  
22 2004 at the Public Service Commission?

23 A. I don't believe I attended the  
24 informal conference. Now, notes could say otherwise,  
25 but I don't think I did.

1           Q.       All right. I do not find you on this  
2 sign-in sheet and --

3           A.       I don't recall being there. I don't  
4 think I attended.

5           Q.       Okay. The next date the parties would  
6 have gotten together would have been Tuesday, May the  
7 4th, 2004. Do you have a recollection of having been  
8 at the Public Service Commission and attended on the  
9 first day of hearings?

10          A.       Yes, I was there that day.

11          Q.       Okay. Tell me what you recall of the  
12 events of that first day.

13          A.       Jon, I recall that we gathered in what  
14 I'll call the main courtroom, whatever conference  
15 room that is that they have, and everyone announced  
16 their appearances and so forth. And my recollection  
17 of the hearing dates, not just on the 4th, but all of  
18 those dates, is that I spent most of the time in a  
19 small conference room with the North American  
20 Stainless representatives waiting.

21          Q.       On the first day, May the 4th?

22          A.       Yeah. I mean, most of the days in  
23 general of the hearing.

24          Q.       Okay. When you say "waiting," what  
25 were you waiting for?

1           A.       Waiting for what I would have assumed  
2 was LG&E to come and talk to North American Stainless  
3 about some sort of proposal.

4           Q.       Okay. Did they subsequently come to  
5 talk to North American Stainless?

6           A.       Yes. And I don't remember which days  
7 we talked and which days we did not. I would assume  
8 that they talked to us a little bit that first day,  
9 but I'm not sure. We may not have even gotten to  
10 talk to them the first day.

11          Q.       Okay. I'm going to represent to you  
12 that parties were either in hearing or in settlement  
13 discussion at the Public Service Commission on  
14 May 4th, 5th and 6th. Do you believe you were in  
15 attendance for all three of those?

16          A.       Yes, I do believe I was there all  
17 three days.

18          Q.       Okay. Do you have a recollection that  
19 sometime on May the 5th that representatives of LG&E  
20 and KU engaged in negotiation over their issues and  
21 came to resolution?

22          A.       I don't know what day that was.

23          Q.       Okay.

24          A.       But, you know, I guess that happened  
25 at some point.

1           Q.       With regard to those discussions, am I  
2 correct that those discussions were in a separate  
3 room from the general discussions going on between  
4 LG&E, KU and the interveners?

5           A.       Say that again.

6           Q.       Am I correct that the North American  
7 Stainless discussions with LG&E and KU were going on  
8 in a separate room than the main discussion between  
9 the interveners, LG&E and KU?

10          A.       That's correct. It was a little small  
11 conference room right to the left as you come in the  
12 front door.

13          Q.       Okay. Do you have a recollection that  
14 any member of the staff participated in the smaller  
15 discussion, if you will, between North American  
16 Stainless and LG&E/KU?

17          A.       I do not.

18          Q.       Okay. And I take it you have no  
19 recollection of any discussions with the staff on  
20 May 4th, 5th or 6th, staff members?

21          A.       Not unless it would just be somebody  
22 talking about the weather or coffee or something like  
23 that in the hallway.

24          Q.       Okay. Salutation kind of  
25 conversation?

1           A.       That's correct.

2           Q.       All right. And I further take it that  
3 you had no conversation on any of those days with any  
4 member of the commission.

5           A.       No, no.

6           Q.       Okay.

7           A.       No. Likewise, not unless you were  
8 just passing in the hallway and said, "Hello."

9           Q.       Okay. Do you have a recollection of  
10 at some time during that week North American  
11 Stainless and LG&E/KU coming to terms, settlement  
12 terms?

13          A.       Yes.

14          Q.       Okay. And --

15          A.       There could have been -- when you said  
16 was there any conversation with any staff, just so  
17 you'll be clear, you know, it could have been that  
18 Richard Raff or one of them would stick their head in  
19 our door and somebody would say, "How long is it  
20 going to be? Are we going to sit here for another  
21 three hours?"

22                   And they'd say, "I don't know, they're  
23 talking over there," you know, that kind of thing,  
24 but nothing substantive.

25          Q.       Okay. Did LG&E, KU and North American

1 Stainless personnel, when they came to terms with  
2 each other, make a report to the bigger group?

3 A. Yes.

4 Q. Okay. And I take it that all  
5 interveners were ultimately aware of the negotiations  
6 between North American Stainless and LG&E/KU.

7 A. Yes.

8 Q. Okay. And the terms of the settlement  
9 arrived at by the two of you.

10 A. Yes. And you've probably been told by  
11 others that, you know, we would then all go to  
12 another conference room or another -- or like a  
13 hearing room, another smaller hearing room, and all  
14 those discussions would take place with everyone  
15 present.

16 Q. Yes. Do you -- were you present on  
17 any occasion on May 4th, 5th and 6th, where you had  
18 some realization that the attorney general, as one of  
19 the interveners, had come to agreement on all issues?

20 A. I don't really -- I don't really  
21 recall, Jon.

22 Q. Okay. Were you present in the hearing  
23 room on May the 6th when Richard Raff, who you've  
24 previously identified, made a remark on the record  
25 that he had overheard the attorney general stating

1 that he believed there was ex parte, inappropriate  
2 and/or collusive behavior associated with the PSC  
3 proceeding?

4 A. I was present. I don't remember the  
5 exact statements that were made, but I was present --

6 Q. Okay.

7 A. -- in the room at the time.

8 Q. Do you recall the course of action  
9 taken by the chairman, Mark David Goss, at that point  
10 in time?

11 A. I do not really recall.

12 Q. Let me try to refresh your memory. Do  
13 you have a recollection that the chairman asked all  
14 those present whether any ex parte, collusive or  
15 inappropriate behavior had occurred, and went around  
16 the room requesting to know if that was the case? Do  
17 you recall that?

18 A. Well, I mean, I would just be  
19 guessing.

20 Q. Okay.

21 A. Generally either Smitty Taylor or Jay  
22 Brew would have answered on our behalf. And I think  
23 I do recall that, but, I mean, I'm -- I'm not sure.

24 Q. Fair enough.

25 A. But if the record says that that

1 happened, I mean, I'm sure it did. I have no reason  
2 to dispute that.

3 Q. Okay. Were you present at the Public  
4 Service Commission on May the 12th, the next week?

5 A. I believe that I was, yes.

6 Q. Okay. And do you have any  
7 recollection of the events of May the 12th?

8 A. No, I really don't.

9 Q. Okay. I will represent to you that  
10 was the last day of public hearing on the matters.

11 A. And I do recall, you know, being again  
12 in the large hearing room, but I don't really  
13 remember the details of it at this time.

14 Q. Okay. Am I correct that you have no  
15 recollection of really having participated in the  
16 general discussion that was occurring in another room  
17 with the interveners and LG&E and KU on the other  
18 rate case issues? Am I correct?

19 A. Yeah. We were largely left out of  
20 that.

21 Q. Okay.

22 A. We weren't really in those  
23 discussions. Now, when we would go into that smaller  
24 hearing room, everyone would talk about and inform  
25 and all that stuff, but a lot of it, you know, we



1 weren't really involved with.

2 Q. Okay. Am I correct that the issues  
3 that were agreed upon by North American Stainless and  
4 LG&E/KU were part of the settlement agreement that  
5 was presented to the commission on May 12th, 2004?

6 A. Yes.

7 Q. Okay. Do you have a recollection of  
8 having received the decision of the Public Service  
9 Commission on or about June 30th, 2004?

10 A. I don't really have a recollection of  
11 that.

12 Q. Okay. Using that date then, if you  
13 will, as a reference point, and going back to the  
14 first day of -- of hearings where you were present,  
15 May 4th, 2004, during that period of time, other than  
16 what you've communicated to me, did you have any  
17 conversations with the staff on any of the rate  
18 cases?

19 A. Oh, no.

20 Q. Okay. And I take it your answer would  
21 be the same with regard to any commission member.

22 A. Yes, that would be true. I don't  
23 think that I was involved at all after May the 12th.

24 Q. Okay. And thus, you had no  
25 conversations with commission members or staff at any

1 time other than what you've told me about.

2 A. Regarding this case, I assume.

3 Q. That's correct. I'm sorry.

4 A. Yes. I mean --

5 Q. Regarding these rate cases.

6 A. -- I may have seen commission members  
7 at other events or something like that.

8 Q. The question is related to the LG&E/KU  
9 rate cases, which are 00433 and 00434, and the North  
10 American Stainless complaint and KU tariff.

11 A. No, I had no conversations with --  
12 with the staff or commission members in that time  
13 period.

14 Q. All right. Did you witness any  
15 conversations, conduct or behavior during this period  
16 of time -- and let's take it from September 2003, the  
17 date of the filing of the North American Stainless  
18 complaint, through June 30th, 2004 -- which you  
19 personally thought was collusive or an indication of  
20 collusive, inappropriate or ex parte conduct?

21 A. I did not.

22 MR. GOLDBERG: Okay. Thank you.  
23 That's all I have, Ms. McCann. We appreciate it  
24 much.

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(STATEMENT CONCLUDED AT 9:30 A.M.)

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1 STATE OF KENTUCKY )(   
 )( SS:   
2 COUNTY OF JEFFERSON )(   
3

4 I, ELLEN L. COULTER, Notary Public,   
5 ~~State of Kentucky at Large, hereby certify that the~~   
6 foregoing sworn statement was taken at the time and   
7 place stated in the caption; that the appearances   
8 were as set forth in the caption; that prior to   
9 giving testimony the witness was first duly sworn by   
10 me; that said testimony was taken down by me in   
11 stenographic notes and thereafter reduced under my   
12 supervision to the foregoing typewritten pages and   
13 that said typewritten transcript is a true, accurate   
14 and complete record of my stenographic notes so   
15 taken.

16 I further certify that I am not   
17 related by blood or marriage to any of the parties   
18 hereto and that I have no interest in the outcome of   
19 captioned case.


20 My commission as Notary Public expires   
21 November 5, 2007.

22 Given under my hand this the 2nd   
23 day of August, 2005, at Louisville,   
24 Kentucky.   
25



ELLEN L. COULTER  
NOTARY PUBLIC

1 I, the undersigned, KIMBERLY McCANN, do  
2 hereby certify that I have read the foregoing sworn  
3 statement, and that, to the best of my knowledge,  
4 said sworn statement is true and accurate, with the  
5 exception of the corrections, if any, listed on the  
6 errata sheet.

7  
8   
9 KIMBERLY McCANN

10  
11 Subscribed and sworn to before me this 6<sup>th</sup>  
12 day of October, 2005.

13  
14  
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16   
17 NOTARY PUBLIC

18  
19 My commission expires 5/23/09  
20  
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25

COULTER REPORTING, LLC  
101 EAST KENTUCKY STREET, SUITE 200  
LOUISVILLE, KY 40203

ERRATA SHEET

NAME KIMBERLY McCANN DATE OF DEPOSITION 8/10/05

After having read my deposition, I wish to make the following changes:

Page \_\_\_\_\_ Line \_\_\_\_\_  
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Reason for change \_\_\_\_\_

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ADJUSTMENT [2] 1/5 1/10	11/24 13/24 15/5 15/23 15/25 16/12 16/25	dispute [1] 16/2
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announced [1] 10/15	chance [1] 3/17	early [3] 5/9 5/23 6/25
another [5] 13/20 14/12 14/12 14/13	chronology [1] 8/6	East [1] 1/22
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another -- [1] 14/12	clear [1] 13/17	either [3] 7/2 11/12 15/21
answer [1] 17/20	code [1] 3/16	ELECTRIC [3] 1/5 1/6 1/10
answered [1] 15/22	coffee [1] 12/22	electricity [1] 5/13
any [26]	collusive [4] 15/2 15/14 18/19 18/20	ELLEN [3] 1/21 20/4 20/18
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